

RULE 11 – CHANGE OF PLEA (J. Singal 4/2001)

COUNSEL ENTERS APPEARANCE.

1. ARE YOU _____, THE PERSON NAMED AS A DEFENDANT IN THIS INDICTMENT?
2. HOW FAR DID YOU GO IN SCHOOL?
3. HAVE YOU RECENTLY BEEN SEEING A DOCTOR OR PSYCHIATRIST?
4. ARE YOU CURRENTLY TAKING ANY MEDICATION?
5. HAVE YOU USED ANY DRUG OR ALCOHOL IN THE LAST 24 HOURS?
6. DO YOU FEEL YOU UNDERSTAND WHAT IS HAPPENING IN THESE PROCEEDINGS?
7. [IF ANY MEDICATION, ALCOHOL OR DRUG USE, INQUIRE OF BOTH LAWYERS WHETHER IN THEIR DEALINGS WITH THE DEFENDANT THERE IS ANY CAUSE FOR CONCERN ABOUT HIS/HER COMPETENCE TO DO RULE 11.]
8. HAS YOUR LAWYER EXPLAINED TO YOU THE CONSEQUENCES THAT MAY FLOW FROM THESE PROCEEDINGS?
9. DO YOU AUTHORIZE _____ [name of lawyer] TO SPEAK ON YOUR BEHALF?
10. I UNDERSTAND THAT YOU WISH TO CHANGE YOUR PLEA TO COUNTS _____ AND _____ OF THE INDICTMENT/INFORMATION. IS THAT CORRECT?

11. MR./MS. _____ [lawyer], DO YOU APPROVE OF THE CHANGE OF PLEA AND RECOMMEND THAT I ACCEPT IT?
12. THE CLERK MAY PROCEED.
[clerk obtains tender of a guilty plea]
13. (A) EXPLAIN PURPOSE OF RULE 11 HEARING AND QUESTIONS.
- (B) IF AT ANY TIME YOU DON'T UNDERSTAND ANY QUESTION I ASK YOU, DON'T TRY TO ANSWER IT. TELL ME YOU DON'T UNDERSTAND AND I WILL REPHRASE IT.
- (C) IF AT ANY TIME YOU WANT TO TALK TO YOUR LAWYER, DON'T TRY TO ANSWER MY QUESTION – TELL ME YOU WANT TO TALK TO YOU LAWYER AND I'LL PERMIT YOU TO DO SO.
14. **[TO DEFENDANT]** HAVE YOU PLEADED GUILTY TO THE CHARGES CONTAINED IN COUNTS _____ AND _____ OF _____ THIS INDICTMENT/INFORMATION BECAUSE YOU ARE ACTUALLY GUILTY?
15. **[TO LAWYER]** ARE YOU SATISFIED THAT _____ **[DEFENDANT]** HAS PLEADED GUILTY BECAUSE HE/SHE IS ACTUALLY GUILTY?
16. **[TO DEFENDANT]** HAVE YOU RECEIVED A COPY OF THE INDICTMENT/ INFORMATION?
17. HAVE YOU HAD ENOUGH TIME TO DISCUSS THE CHARGE(S) WITH YOUR LAWYER?
18. HAS YOUR LAWYER EXPLAINED TO YOU:
- (A) THE ELEMENTS AND NATURE OF THE OFFENSES CHARGED?
- (B) THE PENALTIES THAT CAN BE IMPOSED?
19. **[TO LAWYER]** ARE YOU SATISFIED THAT _____ **[DEFENDANT]** UNDERSTANDS THE CHARGES CONTAINED IN COUNTS _____ AND _____ OF THE INDICTMENT/INFORMATION AND THE PENALTIES THAT CAN BE IMPOSED?
20. **[TO DEFENDANT]** YOU ARE CHARGED IN AN INDICTMENT/INFORMATION CONTAINING _____ COUNTS.
[Set out brief description of offenses]
21. DO YOU UNDERSTAND THESE CHARGES?

22. BY PLEADING GUILTY TO THESE CRIMES

1. YOU ARE SUBJECT TO IMPRISONMENT FOR A TOTAL OF _____ YEAR(S) (WITH A MINIMUM IMPRISONMENT OF _____ YEARS.)
2. YOU ARE ALSO SUBJECT TO TOTAL FINES OF UP TO \$_____.
3. FOLLOWING ANY TERM OF IMPRISONMENT, YOU ARE SUBJECT TO SUPERVISED RELEASE OF UP TO _____ YEARS (WITH A MINIMUM OF _____ YEARS). IF YOU VIOLATE THE TERMS OF THAT SUPERVISED RELEASE YOU COULD RECEIVE AND ADDITIONAL PRISON TERM OF _____ YEARS.
4. YOU MUST ALSO PAY A MANDATORY ASSESSMENT OF \$100 ON EACH COUNT ON WHICH YOU ARE CONVICTED, FOR A TOTAL OF \$_____.

23. DO YOU UNDERSTAND THAT YOU HAVE THE RIGHT TO CONTINUE TO PLEAD NOT GUILTY?

24. YOU HAVE THE RIGHT TO A TRIAL BY JURY, THE RIGHT TO THE ASSISTANCE OF YOUR LAWYER AT SUCH A TRIAL AND, IF YOU CANNOT AFFORD A LAWYER, YOU HAVE THE RIGHT TO HAVE A LAWYER APPOINTED FOR YOU AT GOVERNMENT EXPENSE. DO YOU UNDERSTAND?

25. AT A TRIAL, YOU WOULD BE PRESUMED INNOCENT AND THE GOVERNMENT WOULD HAVE THE BURDEN OF PROVING YOU GUILTY BEYOND A REASONABLE DOUBT AND YOU WOULD NOT HAVE THE BURDEN OF PROVING THAT YOU ARE NOT GUILTY. DO YOU UNDERSTAND?

26. AT A TRIAL THE GOVERNMENT'S WITNESSES WOULD HAVE TO COME INTO OPEN COURT AND TESTIFY IN FRONT OF YOU AND YOUR LAWYER. YOUR LAWYER WOULD HAVE THE OPPORTUNITY TO CROSS-EXAMINE ANY GOVERNMENT WITNESSES, OBJECT TO EVIDENCE THE GOVERNMENT OFFERED, AND OFFER EVIDENCE IN YOUR BEHALF. DO YOU UNDERSTAND?
27. YOU WOULD HAVE THE RIGHT TO TESTIFY AT TRIAL IF YOU WANTED TO, BUT YOU WOULD ALSO HAVE THE RIGHT NOT TO TESTIFY AND YOU COULD NOT BE REQUIRED TO TESTIFY AT TRIAL. IF YOU CHOSE NOT TO TESTIFY, I WOULD INSTRUCT THE JURY THAT THEY COULD DRAW NO INFERENCE OR SUGGESTION OF GUILT FROM THE FACT THAT YOU DID NOT TESTIFY. DO YOU UNDERSTAND?
28. IF I ACCEPT YOUR GUILTY PLEA, YOU WILL HAVE GIVEN UP YOUR RIGHT TO A TRIAL AND THE OTHER RIGHTS I HAVE JUST DESCRIBED TO YOU AND THERE WILL BE NO TRIAL OF ANY KIND ON THIS INDICTMENT/INFORMATION. DO YOU UNDERSTAND?
29. IF I PROCEED TO ENTER A JUDGMENT OF GUILTY AND SENTENCE YOU ON THE BASIS OF YOUR GUILTY PLEA AND IF ALL OF THAT HAPPENS, EXCEPT FOR VERY LIMITED CIRCUMSTANCES, YOU WILL HAVE NO RIGHT OF APPEAL FROM YOUR CONVICTION. DO YOU UNDERSTAND?
30. BY PLEADING GUILTY, YOU ALSO GIVE UP YOUR RIGHT NOT TO INCRIMINATE YOURSELF. I WILL BE ASKING QUESTIONS TODAY ABOUT YOUR CONDUCT THAT GAVE RISE TO THESE CHARGES, YOU WILL BE REQUIRED TO ANSWER MY QUESTIONS TRUTHFULLY, AND

I WILL TAKE YOUR ANSWERS AS TRUE AND ACT ACCORDINGLY.
DO YOU UNDERSTAND?

31. IN LIGHT OF ALL THAT I HAVE JUST EXPLAINED TO YOU, DO YOU STILL CHOOSE TO PLEAD GUILTY TO THE CHARGES CONTAINED IN COUNTS _____ AND _____ OF THE INDICTMENT/INFORMATION?

32. **[TO U.S. ATTORNEY]** MR./MS. _____, PLEASE INFORM ME WHAT EVIDENCE THE GOVERNMENT WOULD PRODUCE IF THIS MATTER SHOULD GO TO TRIAL.

[PROSECUTION VERSION: LISTEN TO ENTIRE RECITAL OF EVIDENCE OR, IN THE ALTERNATIVE, ADMIT WRITTEN PROSECUTION VERSION AND DO INQUIRY.]

33. **[TO LAWYER]** MR./MS. _____, ARE YOU SATISFIED THAT THE GOVERNMENT CAN IN FACT PRODUCE THE EVIDENCE JUST INDICATED BY THE UNITED STATES ATTORNEY?

ARE YOU SATISFIED THAT THE ADMISSIBLE PART OF THAT EVIDENCE WOULD PERMIT A PROPERLY INSTRUCTED JURY TO DETERMINE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT IS GUILTY OF [EACH OF] THE CRIME[S] TO WHICH HE/SHE IS PLEADING GUILTY?

34. **[TO DEFENDANT]** HAVE YOU HEARD THE PROSECUTION DESCRIBE THE EVIDENCE HE/SHE WOULD PRODUCE IF THIS MATTER SHOULD PROCEED TO TRIAL?

[READ PROSECUTION VERSION?]

35. IS THERE ANY RESPECT IN WHICH YOU DISAGREE WITH WHAT HE/SHE HAS SAID?
36. IS THE INFORMATION TRUE TO YOUR OWN PERSONAL KNOWLEDGE?
37. HAS ANYONE THREATENED YOU OR HAS ANYONE ATTEMPTED TO FORCE YOU OR GET YOU IN ANY WAY TO PLEAD GUILTY?
38. DOES YOUR WILLINGNESS TO PLEAD GUILTY RESULT FROM PRIOR DISCUSSIONS BETWEEN YOU OR YOUR LAWYER AND THE GOVERNMENT? IF NO AGREEMENT, GO TO QUESTION # 40.
39. IN EXAMINING THE WRITTEN PLEA AGREEMENT:
- (A) IS THAT YOUR SIGNATURE ON PAGE _____?
 - (B) DID YOU SIGN IT VOLUNTARILY?
 - (C) DID YOU READ IT BEFORE YOU SIGNED IT?
 - (D) DID YOU UNDERSTAND EVERYTHING IN IT BEFORE YOU SIGNED IT?
 - (E) IN SIGNING IT, DID YOU INTEND TO AGREE TO ALL OF ITS TERMS AND CONDITIONS?
40. (A) *[If an 11(e)(1)(B) agreement]* DO YOU UNDERSTAND THAT SO FAR AS SENTENCING IS CONCERNED, THIS PLEA AGREEMENT PERMITS YOU, YOUR LAWYER AND THE PROSECUTOR TO MAKE RECOMMENDATIONS ON SENTENCING, BUT THAT THE AUTHORITY TO DETERMINE THE APPROPRIATE SENTENCE IN THIS CASE RESTS WITH ME AS THE JUDGE IN THIS COURT, AND IF I DO NOT ACCEPT THOSE RECOMMENDATIONS, YOU WILL HAVE NO RIGHT TO WITHDRAW YOUR GUILTY PLEA?

(B) *[If an 11(1)(1)(A) or (C) agreement, detail the specific agreement re: dismissal of counts (A) or sentence limitations (C) and inform the defendant that if the judge does not ultimately accept those provisions, he/she will have the opportunity to withdraw the plea.]*

41. THE SENTENCE IN THIS CASE WILL BE GOVERNED BY APPLYING SENTENCING GUIDELINES. HAVE YOU AND YOUR LAWYER TALKED ABOUT HOW THE SENTENCING COMMISSION GUIDELINES MAY AFFECT YOUR SENTENCE?
42. I CAN'T DETERMINE THE GUIDELINE SENTENCE UNTIL AFTER I HAVE READ A PRESENTENCE REPORT THE PROBATION OFFICE WILL PREPARE, AND UNTIL I HAVE GIVEN YOUR LAWYER AND THE PROSECUTOR AN OPPORTUNITY TO CHALLENGE THE FACTS THE PROBATION OFFICE REPORTS. AFTER I DETERMINE WHAT GUIDELINE DOES APPLY TO A CASE, I STILL HAVE THE AUTHORITY IN SOME CIRCUMSTANCES TO IMPOSE A SENTENCE THAT IS MORE SEVERE OR LESS SEVERE THAN THE SENTENCE CALLED FOR BY THE APPLICABLE GUIDELINE. DO YOU UNDERSTAND? AND YOU STILL WILL NOT BE PERMITTED TO WITHDRAW YOUR GUILTY PLEA. DO YOU UNDERSTAND THAT?
43. YOU AND THE GOVERNMENT WILL HAVE THE RIGHT TO APPEAL ANY SENTENCE THAT I IMPOSE.
44. IF A TERM OF IMPRISONMENT IS IMPOSED, YOU WILL BE REQUIRED TO ACTUALLY SERVE IN A JAIL OR PRISON ALL OF THAT IMPRISONMENT TERM, EXCEPT FOR GOOD-TIME DEDUCTIONS, AND YOU WILL NOT BE PERMITTED TO SERVE ANY PART OF IT ON PAROLE. DO YOU UNDERSTAND?

45. ASIDE FROM THE WRITTEN PLEA AGREEMENT, HAS ANYONE MADE ANY PROMISE TO YOU IN AN EFFORT TO GET YOU TO PLEAD GUILTY?
46. HAS ANYONE MADE ANY PROMISE TO YOU AS TO WHAT KIND OF SENTENCE I WILL IMPOSE?
47. HAS ANYONE MADE ANY PROMISE TO YOU AS TO WHAT THE PROSECUTOR'S RECOMMENDATION WILL BE?
48. I ASK YOU FINALLY, THEN, DO YOU STILL WISH TO PLEAD GUILTY TO THE CHARGES CONTAINED IN COUNTS _____ AND _____ OF THE INDICTMENT/INFORMATION?
49. **[TO LAWYER]** DO YOU, AS _____'S, LAWYER, STILL RECOMMEND THAT I ACCEPT THE GUILTY PLEA?
50. **[TO DEFENDANT]** MR./MS. _____, SINCE YOU ACKNOWLEDGE THAT YOU ARE IN FACT GUILTY AS CHARGED IN COUNTS _____ AND _____ OF THE INDICTMENT/INFORMATION, AND SINCE I FIND THERE IS A FACTUAL BASIS OF THE PLEA, AND SINCE I FIND THAT YOU KNOW OF YOUR RIGHT TO A TRIAL AND THE RIGHTS ASSOCIATED WITH THE RIGHT TO A TRIAL, AND SINCE I FURTHER FIND THAT YOU KNOW THE MAXIMUM POSSIBLE PUNISHMENT [AND MINIMUM, IF APPLICABLE] THAT MAY BE IMPOSED IF YOU ARE CONVICTED, AND SINCE I FIND THAT YOU HAVE NOT BEEN COERCED BUT THAT YOU HAVE VOLUNTARILY AND KNOWINGLY TENDERED A PLEA OF GUILTY TO COUNTS _____ AND _____ OF THIS INDICTMENT/INFORMATION, I NOW ACCEPT YOUR GUILTY PLEA AS TENDERED.